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Federal Communications Commission
Office of Secretary

FAX TRANSMITTAL SHEET

Date: June 6, 2003

Sent to: Mr. Greg Lipscomb
Client: Puerto Rico Department of Education
Fax: 202.418.7361
Telephone No.: 202.418.7400

FCC Secretary: Please file
Under CC Docket No. 02-6
Pursuant to DA 03-1731, a
PN released on May 16, 2003

From: A. J. Bennazar Zaqueara
Reference: E-RATE Funds
Our file number: 5-2692

NUMBER OF PAGES (INCLUDING THIS ONE): 4

As legal counsel for the Puerto Rico Department of Education (PRDOE), I respectfully request that the accompanying document (letter dated May 22, 2003, from the Hon. César Rey, Secretary of the PRDOE, to Mr. Jon Slater, President of Puerto Telephone Company) be included and considered in the administrative proceedings regarding PRDOE's request for the relief of the E-RATE funds years 2001 and 2002.

Cordially,

by: Roberto J. J. Buono

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Commonwealth of Puerto Rico
DEPARTMENT OF EDUCATION

César A. Rey Hernández, Ph.D.
Secretary

May 22, 2003

Mr. Jon Slater
President and CEO
PRT-Telefónica de Puerto Rico
P.O. Box 360998
San Juan, Puerto Rico 00936-0998

Re: E-rate Program Request for Funding Years 4 and 5

Dear Mr. Slater:

This is in response to your letter dated March 26, 2003 and with further reference to our meeting of last Thursday, May 15 at the Department. We indeed recognize that PRT-Telefónica de Puerto Rico has worked with our Department to establish the ReEducate program to provide our students with internet services. We appreciate and look forward to the continued support of PRTC to this project. However, some statements made in your letter need clarification.

It is not correct to say that the PRDOE has received any funding under the Schools and Libraries Division (SLD), since the E-Rate funds are paid directly by USAC to the service providers. We have, indeed, applied for funding for program Years 4 and 5, but since the outset of our administration USAC has refrained from authorizing the disbursement of the requested funds. Thus, we are not insensitive to the fact that PRTC has not been paid for services rendered to the program during the past two years.

You will recall that 90% of the contract payments will be made by USAC directly to vendors and 10% by the PRDOE. The amount to be ultimately paid to PRTC will have to be determined based on the school's service availability, as I explained during our meeting, as documented by PRTC and corroborated by our validation system..

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As you are aware, in December, 2001 USAC wrote to us a letter stating that before they can authorize any further disbursements of E-Rate funds, they requested our written response to certain questions concerning this Department's capability to handle and develop the program. On January 15, 2002, we responded to each and every request in a document that was hand-delivered to USAC at their office by senior officials of this Department.

We have periodically supplemented our information presentations to USAC and have continued to demand in writing the immediate release of funds for the Years 4 and 5 stages of the program, but inexplicably, to date USAC has neither approved the disbursements nor provided any written response to our reiterated requests. We have received consistent verbal assurances both from USAC personnel and from Atty. Jane Mago, General Counsel of the FCC, that USAC and the FCC are satisfied with our responses of January 15, 2002 and subsequent updates, and that the disbursement of funds "will be authorized". But the fact remains that, to date, those verbal assurances have not materialized into any concrete action. We have not even obtained a written reaction to our formal demands for release of funds dated January 15 and September 27, 2002 addressed to USAC, and January 30, 2003 addressed to the FCC. We are not aware of any valid, legal or administrative reason why the funds for Years 4 and 5 cannot be released, and will continue to insist with USAC and the FCC.

Last January, Executive Undersecretary of Education, Dr. Carmen A. Collazo was personally assured by Atty. Mago that the FCC Commissioners were going to receive from her a recommendation that they authorize immediate release of funding for Years 4 and 5. Instead, our legal counsel received telephone communication from USAC and the FCC's Legal Division to the effect that the FCC had received *ex-parte* communications, from parties who requested not to be identified, suggesting lack of impartiality and improper handling of our Department's procurement process for Year 6 funding.

Unfortunately, this type of behind-the scenes maneuvering only complicates the process and further delays the release of the funds. As you are well aware, upon assuming the position of Secretary of Education, I ordered a restructuring of the Department's procurement process and established a system of bidding administered by our Bidding Board ("*Junta de Subastas Central*") which has recently mustered judicial review, precisely in connection with the adjudication of the Year 5 bid to PRTC. Please refer to the Opinion and Order of the Circuit Court of Appeals of the Commonwealth of Puerto Rico (*Tribunal de Circuito de Apelaciones*) in the case of Centennial de Puerto Rico v. Junta de Subasta Central del Departamento de Educación, Civil No. KLRA

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2002-0500. As you will note, the Court of Appeals upheld the procedure by which PRT was awarded the Year 5 contract, by the same bidding board and following the same process utilized to award Year 6.

This Department is very appreciative of PRTC-Telefónica de Puerto Rico's services and support in connection with the REEDUCATE program and we are sure that your company will continue to participate in the bids to provide services for the future years. We need and appreciate your cooperation. We will also be grateful if you can join our efforts in convincing USAC and the FCC that there is absolutely no valid legal or administrative reason to continue to withhold release of funding for Years 4 and 5.

Cordially,


César A. Rey Hernández, Ph.D.
Secretary

c: The Honorable César Miranda
Secretary of Governance-Commonwealth of P.R.

The Honorable Aníbal Acevedo Vilá
Puerto Rico Resident Commissioner

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